

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

<b>In the Matter of</b>	)	
	)	
<b>CTIA Petition for Declaratory Ruling that Wireline</b>	)	<b>CC Docket No. 95-116</b>
<b>Carriers Must Provide Portability to Wireless</b>	)	
<b>Carriers Operating Within Their Service Areas</b>	)	

**To: The Wireless Telecommunications Bureau**

**COMMENTS**

Midwest Wireless Holdings L.L.C. and its affiliates (“Midwest Wireless”)<sup>1</sup>, by its attorneys, respectfully submit these comments in response to the invitation of the Wireless Telecommunications Bureau (“the Bureau”)<sup>2</sup> to comment on the *CTIA Petition for Declaratory Ruling that Wireline Carriers Must Provide Portability to Wireless Carriers Operating Within Their Service Areas* (“Petition”).<sup>3</sup> The Petition asks the Commission to rule that wireline carriers are obligated to provide portability of their customers’ telephone numbers to Commercial Mobile Radio Service (“CMRS”) providers whose service area overlaps the wireline carriers’ rate centers. CTIA contends that some local exchange carriers (“LECs”) take the position that portability is required only where CMRS providers have established a presence in the landline rate center where customers seek to port numbers from the LEC to CMRS providers.

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<sup>1</sup> The following companies are wholly-owned or majority-controlled subsidiaries of Midwest Wireless Holdings L.L.C. and are authorized by the FCC to provide broadband Commercial Mobile Radio Service and other broadband services: Midwest Wireless Communications L.L.C., Midwest Wireless Iowa L.L.C., Midwest Wireless Wisconsin L.L.C. and Midwest Wireless Holdings L.L.C.

<sup>2</sup> *Comment Sought on CTIA Petition for Declaratory Ruling that Wireline Carriers Must provide Portability to Wireless Carriers Operating Within Their Service Areas*, Public Notice, CC Docket No. 95-116, DA 03-211, released January 7, 2003.

<sup>3</sup> *Telephone Number Portability*, CC Docket No. 95-116, Petition for Declaratory Ruling of the Cellular Telecommunications & Internet Association, filed with the Federal Communications Commission (“FCC” or “Commission”) on January 23, 2003.

## **I. Introduction**

Midwest Wireless is a carrier that provides Commercial Mobile Radio Services (“CMRS”) almost exclusively in rural areas. The company plans to comply with the CMRS Local Number Portability (“LNP”) requirements when they become effective. However, Midwest Wireless supports the proposition of CTIA that the right of wireline customers to port numbers to wireless carriers must be more explicitly protected in order to fulfill the FCC’s stated goal of promoting intermodal competition. The Commission should confirm that 1) wireline carriers are obliged to port numbers to wireless carriers when the CMRS carrier’s service area overlaps the wireline carrier’s rate center, and 2) this should be accomplished via a standard service-level porting agreement between the carriers. There are no technical or operational impediments to wireline carriers permitting wireline customers to port their numbers to the wireline or wireless carrier of their choice.

## **II. Clarification of LECs’ Porting Obligations Will Promote Competition in Rural Areas**

As a CMRS provider in rural and small markets, Midwest Wireless anticipates the need to become capable of providing LNP in compliance with FCC mandates. The phone numbers of wireless customers will be exchanged among CMRS providers as subscribers port them from wireless system to wireless system. However, if the object of LNP is to promote intermodal competition, the FCC must clarify the framework for the porting of numbers between wireless and wireline systems.<sup>4</sup>

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<sup>4</sup> Midwest Wireless companies have been designated as Competitive Eligible Telecommunications Carriers by the respective state commissions in Minnesota and Iowa. In Wisconsin, Midwest Wireless Wisconsin LLC has applied for Competitive Eligible Telecommunications Carrier status.

The only equitable requirement is one that applies when the service areas of the respective wireline and wireless carriers overlap. Limitation of the requirement to circumstances where the wireless carrier has a presence in the landline rate center would severely skew the competitive advantage in favor of the wireline carrier, to the disadvantage of customers who want to port their wireline numbers to a wireless service. Not unexpectedly, some LECs prefer to minimize their number porting obligations, and have crafted an interpretation that limits their obligation to rate center overlap. This perspective improves LECs' geographic odds to eight-to-one that they will not be required to port a wireline customer to a wireless provider.<sup>5</sup> The competitive disadvantage to CMRS providers is even greater in rural areas such as those served by Midwest Wireless, where the ratio is closer to eleven-to-one. Rural CMRS providers would suffer disproportionately under the LECs' scenario because of the increased likelihood that consumers will forego a change of carriers in order to retain their familiar telephone numbers. The FCC must not allow incumbent LECs to manipulate the LNP mandate toward this result. The FCC must itself fashion the requirement in a manner to best serve the public interest.

Midwest Wireless is particularly concerned about the state of competition in the rural areas that it serves. Under the scenario suggested by some LECs, in order to receive a full complement of wireline ported numbers Midwest Wireless would be required to establish at an inordinate cost a presence in every rate center within the LEC's local calling area. A point of interconnection, in particular, would include a minimum of a direct interconnection agreement with the incumbent LEC, a T-1 facility from the incumbent LEC to a Midwest Wireless switching facility, and a 1,000 block

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<sup>5</sup> CTIA explains that the chance of wireline-wireless rate center overlap is only one in eight on average across the country. Petition, p. 6.

of numbers.<sup>6</sup> Such a network plan is not economically feasible in Midwest Wireless' rural markets. Intermodal competition in rural markets will be attainable only with broader obligations, explicitly drawn, requiring the LECs to port to wireless carriers.

In addition to the inequity, the circuitry of the LECs' interpretation makes it difficult to administer and easy to argue over, with the effect being to dampen intermodal competition and preserve LECs' hold on customers despite customers' preferences. The Commission should address the issues presented by CTIA in a Declaratory Ruling, making it clear that where service areas overlap, service provider portability is achieved. In such circumstance both wireline and wireless service providers must participate in number portability.

To prevent the construction of further roadblocks, the Commission should also state that the porting of numbers can be accomplished simply, with a service level porting agreement between the carriers. One carrier will release a customer's number to another carrier, and assign the number to the new carrier in the Number Portability Administration Center database, which is queried to identify the carrier that can terminate calls to the customer. Midwest Wireless agrees with CTIA that there is no reason to treat a call delivered to a ported number any differently than a call delivered to a number that has never been ported.

### **III. Conclusion**

Sufficient justification exists for the FCC to rule that wireline carriers are obligated to provide portability of their customers' telephone numbers to CMRS providers whose service areas overlap the wireline carriers' rate centers. Midwest Wireless therefore supports CTIA's Petition For

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6 If 1,000 block number pooling is not available in the rate center, a 10,000 block would be required.

Declaratory Ruling as a means for the Commission to promote and protect the rights of wireless customers to enjoy fully the benefits of competition between wireline and wireless service providers.

Respectfully submitted,

**MIDWEST WIRELESS HOLDINGS L.L.C.**

/s/ *David L. Nace*

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## CERTIFICATE OF SERVICE

I, Loren Costantino, an employee in the law offices of Lukas, Nace, Gutierrez & Sachs, Chartered, do hereby certify that I have on this 26<sup>th</sup> day of February, 2003, sent by hand-delivery, a copy of the foregoing COMMENTS to the following:

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